

file for one year from the date of aircraft entry.

(b) *Overages*—(1) *Reporting*. Overages (merchandise found but not listed on the manifest or air waybill) shall be reported to the port director by the aircraft commander or agent. The report shall be made:

(i) On a Customs Form 5931; or

(ii) On a separate copy of the cargo manifest which is marked “Post Entry” and lists the overage merchandise and the reason for the overage.

(2) *Time to file*. Overages shall be reported within 30 days of aircraft entry.

(3) *Evidence*. Satisfactory proof of the reasons for the overage shall be kept on file by the carrier for one year from the date of the report.

(c) *Statement on cargo manifest*. If the air cargo manifest is used to report shortages or overages, the Shortages Declaration or Post Entry must include the signed statement of the aircraft commander or agent as follows:

I declare to the best of my knowledge and belief that the discrepancy described herein occurred for the reason stated. I also certify that evidence to support the explanation of the discrepancy will be retained in the carrier’s files for a period of at least one year and will be made available to Customs on demand.

Signature \_\_\_\_\_  
(Aircraft Commander or Agent)

(d) *Notice by port director*. The port director shall immediately notify the aircraft commander or agent of any shortages or overages that were not reported by the aircraft commander or agent. Notice shall be given by sending a copy of Customs Form 5931 to the aircraft commander or agent, or in any other appropriate way. The aircraft commander or agent shall make a satisfactory reply within 30 days of entry of the aircraft or receipt of the notice, whichever is later.

(e) *Correction not required*. A correction in the manifest or air waybill is not required if:

(1) The port director is satisfied that the difference between the quantity of bulk merchandise listed on the manifest or air waybill, and the quantity unladen, is the usual difference caused by absorption or loss of moisture, temperature, faulty weighing at the airport, or other such reason; and

(2) The marks or numbers on merchandise packages are different from the marks or numbers listed on the cargo manifest for those packages if the quantity and description of the merchandise is given correctly.

(f) *Statutes applicable*. If an aircraft arrives in the U.S. from a foreign area with merchandise and unaccompanied baggage for which a manifest or air waybill must be filed, section 584 (concerning manifest violations), Tariff Act of 1930, as amended (19 U.S.C. 1584, applies.

[T.D. 88-12, 53 FR 9292, Mar. 22, 1988, as amended by T.D. 98-74, 63 FR 51288, Sept. 25, 1998]

**§ 122.49a Electronic manifest requirement for passengers onboard commercial aircraft arriving in the United States.**

(a) *Definitions*. The following definitions apply for purposes of this section:

*Appropriate official*. “Appropriate official” means the master or commanding officer, or authorized agent, owner, or consignee, of a commercial aircraft; this term and the term “carrier” are sometimes used interchangeably.

*Carrier*. See “Appropriate official.”

*Commercial aircraft*. “Commercial aircraft” has the meaning provided in § 122.1(d) and includes aircraft engaged in passenger flight operations, all-cargo flight operations, and dual flight operations involving the transport of both cargo and passengers.

*Crew Member*. “Crew member” means a person serving on board an aircraft in good faith in any capacity required for normal operation and service of the flight. In addition, the definition of “crew member” applicable to this section should not be applied in the context of other customs laws, to the extent this definition differs from the meaning of “crew member” contemplated in such other customs laws.

*Departure*. “Departure” means the point at which the wheels are up on the aircraft and the aircraft is en route directly to its destination.

*Emergency*. “Emergency” means, with respect to an aircraft arriving at a U.S. port due to an emergency, an urgent situation due to a mechanical, medical, or security problem affecting

the flight, or to an urgent situation affecting the non-U.S. port of destination that necessitates a detour to a U.S. port.

*Passenger.* “Passenger” means any person, including a Federal Aviation Administration (FAA) Aviation Security Inspector with valid credentials and authorization, being transported on a commercial aircraft who is not a crew member.

*Securing the aircraft.* “Securing the aircraft” means the moment the aircraft’s doors are closed and secured for flight.

*United States.* “United States” means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, and the Virgin Islands of the United States.

(b) *Electronic arrival manifest*—(1) *General*—(i) *Basic requirement.* Except as provided in paragraph (c) of this section, an appropriate official of each commercial aircraft (carrier) arriving in the United States from any place outside the United States must transmit to the Advance Passenger Information System (APIS; referred to in this section as the Customs and Border Protection (CBP) system), the electronic data interchange system approved by CBP for such transmissions, an electronic passenger arrival manifest covering all passengers checked in for the flight. A passenger manifest must be transmitted separately from a crew member manifest required under § 122.49b if transmission is in U.S. EDIFACT format. The passenger manifest must be transmitted to the CBP system at the place and time specified in paragraph (b)(2) of this section, in the manner set forth under paragraph (b)(1)(ii) of this section.

(ii) *Transmission of manifests.* A carrier required to make passenger arrival manifest transmissions to the CBP system under paragraph (b)(1)(i) of this section must make the required transmissions, covering all passengers checked in for the flight, in accordance with either paragraph (b)(1)(ii)(A), (B), (C), or (D) of this section, as follows:

(A) *Non-interactive batch transmission option.* A carrier that chooses not to transmit required passenger manifests by means of a CBP-certified interactive electronic transmission system under paragraph (b)(1)(ii)(B), (C), or (D) of

this section must make batch manifest transmissions in accordance with this paragraph (b)(1)(ii)(A) by means of a non-interactive electronic transmission system approved by CBP. The carrier may make a single, complete batch manifest transmission containing the data required under paragraph (b)(3) of this section for all passengers checked in for the flight or two or more partial batch manifest transmissions, each containing the required data for the identified passengers and which together cover all passengers checked in for the flight. After receipt of the manifest information, the CBP system will perform an initial security vetting of the data and send to the carrier by a non-interactive transmission method a “not-cleared” instruction for passengers identified as requiring additional security analysis and a “selectee” instruction for passengers requiring secondary screening (e.g., additional examination of the person and/or his baggage) under applicable Transportation Security Administration (TSA) requirements. The carrier must designate as a “selectee” any passenger so identified during initial security vetting, in accordance with applicable TSA requirements. The carrier must not issue a boarding pass to, or load the baggage of, any passenger subject to a “not-cleared” instruction and must contact TSA to seek resolution of the “not-cleared” instruction by providing, if necessary, additional relevant information relative to the “not-cleared” passenger. TSA will notify the carrier if the “not-cleared” passenger is cleared for boarding or downgraded to “selectee” status based on the additional security analysis.

(B) *Interactive batch transmission option.* A carrier, upon obtaining CBP certification, in accordance with paragraph (b)(1)(ii)(E) of this section, may make manifest transmissions by means of an interactive electronic transmission system configured for batch transmission of data and receipt from the CBP system of appropriate messages. A carrier operating under this paragraph must make transmissions by transmitting a single, complete batch manifest containing the data required under paragraph (b)(3) of this section for all passengers checked in for the

flight or two or more partial batch manifests, each containing the required data for the identified passengers and which together cover all passengers checked in for the flight. In the case of connecting passengers arriving at the connecting airport already in possession of boarding passes for a U.S.-bound flight whose data have not been collected by the carrier, the carrier must transmit all required manifest data for these passengers when they arrive at the gate, or some other suitable place designated by the carrier, for the flight. After receipt of the manifest information, the CBP system will perform an initial security vetting of the data and send to the carrier by interactive electronic transmission, as appropriate, a “cleared” instruction for passengers not matching against the watch list, a “not-cleared” instruction for passengers identified as requiring additional security analysis, and a “selectee” instruction for passengers who require secondary screening (e.g., additional examination of the person and/or his baggage) under applicable TSA requirements. The carrier must designate as a “selectee” any passenger so identified during initial security vetting, in accordance with applicable TSA requirements. The carrier must not issue a boarding pass to, or load the baggage of, any passenger subject to a “not-cleared” instruction and, in the case of connecting passengers (as described in this paragraph), the carrier must not board or load the baggage of any such passenger until the CBP system returns a “cleared” or “selectee” response for that passenger. Where a “selectee” instruction is received for a connecting passenger, the carrier must ensure that such passenger undergoes secondary screening before boarding. The carrier must seek resolution of a “not-cleared” instruction by contacting TSA and providing, if necessary, additional relevant information relative to the “not-cleared” passenger. Upon completion of the additional security analysis, TSA will notify the carrier if a “not-cleared” passenger is cleared for boarding or downgraded to “selectee” status based on the additional security analysis. No later than 30 minutes after the securing of the aircraft, the

carrier must transmit to the CBP system a message reporting any passengers who checked in but were not onboard the flight. The message must identify the passengers by a unique identifier selected or devised by the carrier or by specific passenger data (e.g., name) and may contain the unique identifiers or data for all passengers onboard the flight or for only those passengers who checked in but were not onboard the flight.

(C) *Interactive individual passenger information transmission option.* A carrier, upon obtaining CBP certification, in accordance with paragraph (b)(1)(ii)(E) of this section, may make manifest transmissions by means of an interactive electronic transmission system configured for transmitting individual passenger data for each passenger and for receiving from the CBP system appropriate messages. A carrier operating under this paragraph must make such transmissions as individual passengers check in for the flight or, in the case of connecting passengers arriving at the connecting airport already in possession of boarding passes for a U.S.-bound flight whose data have not been collected by the carrier, as these connecting passengers arrive at the gate, or some other suitable place designated by the carrier, for the flight. With each transmission of manifest information by the carrier, the CBP system will perform an initial security vetting of the data and send to the carrier by interactive electronic transmission, as appropriate, a “cleared” instruction for passengers not matching against the watch list, a “not-cleared” instruction for passengers identified as requiring additional security analysis, and a “selectee” instruction for passengers requiring secondary screening (e.g., additional examination of the person and/or his baggage) under applicable TSA requirements. The carrier must designate as a “selectee” any passenger so identified during initial security vetting, in accordance with applicable TSA requirements. The carrier must not issue a boarding pass to, or load the baggage of, any passenger subject to a “not-cleared” instruction and, in the case of connecting passengers (as described in this paragraph), must not board or load the baggage of any such

passenger until the CBP system returns a “cleared” or “selectee” response for that passenger. Where a “selectee” instruction is received by the carrier for a connecting passenger, the carrier must ensure that secondary screening of the passenger is conducted before boarding. The carrier must seek resolution of a “not-cleared” instruction by contacting TSA and providing, if necessary, additional relevant information relative to the “not-cleared” passenger. Upon completion of the additional security analysis, TSA will notify the carrier if a “not-cleared” passenger is cleared for boarding or downgraded to “selectee” status based on the additional security analysis. No later than 30 minutes after the securing of the aircraft, the carrier must transmit to the CBP system a message reporting any passengers who checked in but were not onboard the flight. The message must identify the passengers by a unique identifier selected or devised by the carrier or by specific passenger data (name) and may contain the unique identifiers or data for all passengers onboard the flight or for only those passengers who checked in but were not onboard the flight.

(D) *Combined use of interactive methods.* If certified to do so, a carrier may make transmissions under both paragraphs (b)(1)(ii)(B) and (C) of this section for a particular flight or for different flights.

(E) *Certification.* Before making any required manifest transmissions under paragraph (b)(1)(ii)(B) or (C) of this section, a carrier must subject its electronic transmission system to CBP testing, and CBP must certify that the carrier’s system is then presently capable of interactively communicating with the CBP system for effective transmission of manifest data and receipt of appropriate messages in accordance with those paragraphs.

(2) *Place and time for submission.* The appropriate official specified in paragraph (b)(1)(i) of this section (carrier) must transmit the arrival manifest or manifest data as required under paragraphs (b)(1)(i) and (ii) of this section to the CBP system (CBP Data Center, CBP Headquarters), in accordance with the following:

(i) For manifests transmitted under paragraph (b)(1)(ii)(A) or (B) of this section, no later than 30 minutes prior to the securing of the aircraft;

(ii) For manifest information transmitted under paragraph (b)(1)(ii)(C) of this section, no later than the securing of the aircraft;

(iii) For flights not originally destined to the United States but diverted to a U.S. port due to an emergency, no later than 30 minutes prior to arrival; in cases of non-compliance, CBP will take into consideration whether the carrier was equipped to make the transmission and the circumstances of the emergency situation; and

(iv) For an aircraft operating as an air ambulance in service of a medical emergency, no later than 30 minutes prior to arrival; in cases of non-compliance, CBP will take into consideration whether the carrier was equipped to make the transmission and the circumstances of the emergency situation.

(3) *Information required.* Except as provided in paragraph (c) of this section, the electronic passenger arrival manifest required under paragraph (b)(1) of this section must contain the following information for all passengers, except that the information specified in paragraphs (b)(iv), (v), (x), (xii), (xiii), and (xiv) of this section must be included on the manifest only on or after October 4, 2005:

(i) Full name (last, first, and, if available, middle);

(ii) Date of birth;

(iii) Gender (F = female; M = male);

(iv) Citizenship;

(v) Country of residence;

(vi) Status on board the aircraft;

(vii) Travel document type (*e.g.*, P = passport; A = alien registration card);

(viii) Passport number, if a passport is required;

(ix) Passport country of issuance, if a passport is required;

(x) Passport expiration date, if a passport is required;

(xi) Alien registration number, where applicable;

(xii) Address while in the United States (number and street, city, state, and zip code), except that this information is not required for U.S. citizens, lawful permanent residents, or persons

who are in transit to a location outside the United States;

(xiii) Passenger Name Record locator, if available;

(xiv) International Air Transport Association (IATA) code of foreign port/place where transportation to the United States began (foreign port code);

(xv) IATA code of port/place of first arrival (arrival port code);

(xvi) IATA code of final foreign port/place of destination for in-transit passengers (foreign port code);

(xvii) Airline carrier code;

(xviii) Flight number; and

(xix) Date of aircraft arrival.

(c) *Exception.* The electronic passenger arrival manifest specified in paragraph (b)(1) of this section is not required for active duty U.S. military personnel being transported as passengers on arriving Department of Defense commercial chartered aircraft.

(d) *Carrier responsibility for comparing information collected with travel document.* The carrier collecting the information described in paragraph (b)(3) of this section is responsible for comparing the travel document presented by the passenger with the travel document information it is transmitting to CBP in accordance with this section in order to ensure that the information is correct, the document appears to be valid for travel to the United States, and the passenger is the person to whom the travel document was issued.

(e) *Sharing of manifest information.* Information contained in the passenger manifests required by this section that is received by CBP electronically may, upon request, be shared with other Federal agencies for the purpose of protecting national security. CBP may also share such information as otherwise authorized by law.

[CBP Dec. 05-12, 70 FR 17852, Apr. 7, 2005, as amended by CBP Dec. 07-64, 72 FR 48342, Aug. 23, 2007]

**§ 122.49b Electronic manifest requirement for crew members and non-crew members onboard commercial aircraft arriving in, continuing within, and overflying the United States.**

(a) *Definitions.* The definitions set forth below apply for purposes of this section. The definitions set forth in

§ 122.49a(a), other than those for the terms set forth below, also apply for purposes of this section:

*All-cargo flight.* “All-cargo flight” means a flight in operation for the purpose of transporting cargo which has onboard only “crew members” and “non-crew members” as defined in this paragraph.

*Carrier.* In addition to the meaning set forth in § 122.49a(a), “carrier” includes each entity that is an “aircraft operator” or “foreign air carrier” with a security program under 49 CFR part 1544, 1546, or 1550 of the Transportation Security Administration regulations.

*Crew member.* “Crew member” means a pilot, copilot, flight engineer, airline management personnel authorized to travel in the cockpit, cabin crew, and relief crew (also known as “deadheading crew”). However, for all other purposes of immigration law and documentary evidence required under the Immigration and Nationality Act (8 U.S.C. 1101, *et seq.*), “crew member” (or “crewman”) means a person serving onboard an aircraft in good faith in any capacity required for the normal operation and service of the flight (8 U.S.C. 1101(a)(10) and (a)(15)(D), as applicable). In addition, the definition of “crew member” applicable to this section should not be applied in the context of other customs laws, to the extent this definition differs from the meaning of “crew member” contemplated in such other customs laws.

*Flight continuing within the United States.* “Flight continuing within the United States” refers to the domestic leg of a flight operated by a foreign air carrier that originates at a foreign port or place, arrives at a U.S. port, and then continues to a second U.S. port.

*Flight overflying the United States.* “Flight overflying the United States” refers to a flight departing from a foreign port or place that enters the territorial airspace of the U.S. en route to another foreign port or place.

*Non-crew member.* “Non-crew member” means air carrier employees and their family members and persons traveling onboard a commercial aircraft for the safety of the flight (such as an animal handler when animals are onboard). The definition of “non-crew member” is limited to all-cargo flights.